

Supreme Court, U. S.

FILED

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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1977

**No. 77-1259**

**BEN R. HENDRIX TRADING CO., INC.,**  
Petitioner,

versus

**J. HENRY SCHRODER BANKING CORPORATION,  
CLAUDIO CASTANEDA, SHERIFF OF HIDALGO  
COUNTY, TEXAS, W. MICHAEL BLUMENTHAL,  
SECRETARY OF THE TREASURY OF THE UNITED  
STATES, ALAMO EXPRESS, INC., KEN KELLAR, d/b/a  
EXPORTS, INC. AND JUD BRADY, d/b/a BRADY'S,**  
Respondents.

**BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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OPINIONS BELOW

Petitioner fails to include in its Appendix the opin-  
ion of the district court, and thus that opinion is in-  
cluded in the Appendix attached hereto.



## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES OR REGULATIONS CONCERNED

In addition to those discussed in Hendrix' Petition, the Constitutional provisions, treaties, statutes, ordinances or regulations involved are 28 U.S.C., Section 1331:

### § 1331. *Federal question; amount in controversy; costs*

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States except that no such sum or value shall be required in any such action brought against the United States, any agency thereof, or any officer or employee thereof in his official capacity.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

## 19 U.S.C., Section 1483:

### § 1483. *Consignee as owner of merchandise*

For the purposes of this subtitle —

(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees.

(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 1484 of this title (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof.

## 19 U.S.C., Section 1484(j):

### 19 § 1484 *CUSTOMS DUTIES*

#### *Release of merchandise*

(j) Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only

to or upon the order of the proprietor of the warehouse. The customs officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The customs officer shall not be liable to any person in respect of the delivery of merchandise released from customs custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.

19 U.S.C., Section 1555:

§ 1555. *Bonded warehouses*

Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officer, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or clean-

ing of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

and 19 U.S.C., Section 1557:

*§ 1557. Entry for warehouse; warehouse period; drawback*

(a) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within three years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port: *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed three years from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may

be entered or withdrawn at any time within three years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferor from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges



provided for in this section and in sections 1562 and 1563 of this title which were vested in the transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of money paid by him to the United States with respect to the merchandise the subject of the transfer, and shall have the right to file a protest under section 514 of this Act to the same extent that such right would have been available to the transferor. Notice of liquidation shall be given to the transferee in the form and manner prescribed by the Secretary of the Treasury. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers.

(c) Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded.

#### STATEMENT OF THE CASE

These Respondents are dissatisfied with the Statement of the Case and the Statement of Facts as set forth in the Petition filed by Ben R. Hendrix Trading Co., Inc. (hereinafter called Hendrix) and hereby submit their own statement of the case.

This controversy originated when J. Henry Schroder Banking Corporation (hereinafter called Schroder) filed suit in a state district court in Texas to recover a sum due on notes executed and delivered to Schroder by Hendrix. Schroder caused a writ of sequestration to issue in that cause, under which writ was seized certain merchandise, consisting primarily of liquor and wines, owned by Hendrix and located in Customs bonded warehouses. After negotiations between their respective attorneys, a compromise agreement was executed by the parties. Pursuant to the agreement, a consent judgment was executed by the Attorney for Hendrix, which judgment provided that Schroder recover the balance owing on the notes together with interest and attorneys' fees. The judgment further provided for the foreclosure of Schroder's security interest in the inventory of Hendrix that had been previously sequestered and for judicial sale of such property. The compromise agreement set forth a plan for sale of the goods that had been sequestered and disposition of the proceeds of such sale.

The plan for sale of the merchandise set forth in the compromise agreement was never carried out, and the merchandise remained unsold. The consent judgment was signed by the judge of the state court and has since become final. After the judgment had been signed and entered, orders of sale for the previously sequestered goods were issued. Schroder also obtained the issuance of a post-judgment writ of garnishment and had it served upon Alamo Express, Inc., which was at the time of service of the writ in possession of additional of liquor and other merchandise belonging to Hendrix.

The orders of sale directed the sheriff to insure that the sale be conducted in compliance with Customs laws and regulations, that the sale be made only to a Customs bonded dealer, that all paperwork required by Customs to transfer merchandise in bond be executed, and that the purchaser be responsible for payment of all Customs duties and Internal Revenue taxes owing on the goods. Despite this language protecting governmental interests, Customs officials flatly stated that they would not recognize any of the state court orders or writs and that they would not release the merchandise to anyone who might purchase it at judicial sales held under state court authority. The garnished goods were not sold by the state court, but there was an attempted judicial sale of the goods subject to the orders of sale.

Schroder then filed this action in the district court below, seeking declaratory judgment that the judicial sales were valid and must be recognized by Customs officials. Schroder further sought a writ of mandamus to compel Customs officials to release the goods that had been the subject of the attempted sales to the firms purchasing the goods at the sales, Ken Kellar, D/B/A Exports, Inc. and Jud Brady, D/B/A Brady's. Hendrix sought a declaration that the attempted sales and seizures were void, that the officers of the state court and the purchasers at the judicial sales were without power to interfere with the goods and that Customs should completely disregard the state court orders and, upon the request of Hendrix, release the goods from Customs bond to Hendrix for shipment out of the country in accordance with standard Customs procedure. Jurisdiction of the claims of both Schroder and Hendrix was based upon 28 U.S.C., Section 1331.

Trial was held, after which the district court below ruled that the sales that had been attempted were void because the orders of sale were not directed to the warehousemen. The district court denied Schroder's request for a writ of mandamus. The district court added, however, that judicial sales by a state court of merchandise in Customs bond are valid if the warehousemen holding the goods are made parties to the foreclosure proceedings and if the orders of sale are directed to them. The district court below declared that the goods were validly *in custodia legis* of the state district court for resale in accordance with the procedure outlined in the ruling of the district court or other disposition. Hendrix and the Customs officials appealed.

After the appeal was docketed, Hendrix voluntarily filed a Petition under Chapter XI of the Bankruptcy Act. Pursuant to an order in the bankruptcy proceeding, all the merchandise that was the subject of the attempted judicial sales and all the merchandise that was garnished on the Alamo trucks was sold by a receiver. Both Customs officials and Hendrix recognized that the bankruptcy court had power to make such a sale. The Customs officials transferred the merchandise that was sold to the purchasers. Hendrix owns no other merchandise or goods under Customs bond and is no longer actively involved in importing and exporting bonded merchandise. Customs and all the other parties except Hendrix then urged the Fifth Circuit to dismiss the appeal as moot, and the Fifth Circuit did so in its opinion of October 11, 1977.



## REASONS FOR DENYING THE WRIT

Hendrix bases its application for writ of certiorari upon the ground that this case presents an important question of federal law which has not been and should be settled by this Court. It also argues that this Court's power of supervision is called for by the sanction of a departure from the accepted and usual course of judicial proceedings. As pointed out below, no unique, undecided, or important federal question was dealt with in the opinion of the Court of Appeals for the Fifth Circuit. Instead, that court simply dismissed the appeal of Hendrix as moot. That action was required by firmly established precedents of this Court.

In its Petition, Hendrix lists only the mootness question in the section setting forth the questions presented. At other places in its Petition, however, it discusses several other questions. As pointed out below, these questions were either correctly decided by the district court below or not presented to it and thus waived.

### A.

**An Appeal By An Owner Of Goods In Customs Bond From A Judgment Declaring That A State Court Has Jurisdiction To Order The Seizure And Sale Of Such Goods Becomes Moot When The Owner Voluntarily Files A Petition Under Chapter XI Of The Bankruptcy Act And The Bankruptcy Court Orders The Goods Sold.**

The real and immediate controversy that gave rise to the actions by Hendrix and Schroder involved

whether control of the merchandise would be with Hendrix on the one hand, or with the state court officers and those who purchased it at the judicial sales, on the other. Since the goods have now been sold in an admittedly valid manner and are in the hands of third parties, it is clear that none of the parties to the controversy below can be declared to have any right of control over the goods. Thus the real and immediate controversy no longer exists. Since Hendrix owns no other merchandise in bond and has ceased to be active in the business of importing and exporting bonded merchandise, there is no likelihood that a similar controversy might arise among these parties in the future. Therefore, the Fifth Circuit was correct in holding the dispute moot.

In its Petition Hendrix does not argue with the proposition that there is no longer any live dispute regarding the right to possession and control of the merchandise. Instead, it argues that this controversy is not moot because the original decision of the district court below was supposedly relied upon by the bankruptcy judge in determining the distribution of the proceeds of sale of Hendrix' merchandise. The relevance of the decision of the district court below to the proper distribution of the proceeds in the bankruptcy court is debatable. It is quite clear, however, that the possibility that the district court's ruling might be relied upon as precedent in some collateral proceeding cannot breathe life into this controversy that has clearly become moot. Instead, as pointed out by the Fifth Circuit, it would be premature for an appellate court reviewing this case to concern itself with the distribution of proceeds in the bankruptcy court. In the

first place, Hendrix failed to timely perfect its appeal from the ruling of the bankruptcy court, and a motion to dismiss the appeal is now being prepared. Even if the appeal is not dismissed and even if one of the issues dealt with by the district court below becomes relevant to the bankruptcy proceedings, that issue should be resolved through the normal route of appeal from the bankruptcy judge to the district court and such further appeals as may be appropriate.

Hendrix argues that the issue of the validity of state court seizure of goods under Customs' bond should be determined by this Court despite the absence of a live controversy since it is an issue "capable of repetition, yet evading review" under the rule of such cases as *Moore v. Ogilvie*, 384 U.S. 814 (1969). Hendrix is no longer in the business of handling bonded merchandise, and the Fifth Circuit was correct in concluding that it is unlikely that Hendrix will be faced in the future with a state court seizure of bonded merchandise. Hendrix has no assets other than those sold in the bankruptcy proceeding, but it owes debts that exceed the proceeds of that sale by approximately one million dollars.

Although other import-export firms might be the subject of such a collection procedure, there is certainly no reason to believe that these other firms would all have their goods sold in bankruptcy prior to a determination of the validity of the seizure. Moreover, as Hendrix admits in its Petition, it or any other firm in a similar situation could raise the question of the validity of a seizure of goods in Customs' bond by filing a damage suit for wrongful seizure. Hendrix has never

sought such damages in this or any other proceeding, but the existence of that possibility precludes the issue of the validity of the seizures from being classified as one "evading review". It is made clear in *DeFunis v. Odegaard*, 416 U.S. 312, 319 (1974), that this exception from the traditional mootness doctrine utilized in such cases as *Moore v. Ogilvie*, 384 U.S. 814 (1969), is a very limited one reserved for exceptional situations not present in the case before this Court.

Finally, Hendrix argues that this matter cannot be moot because the appellate costs were taxed against it through the ruling of the Fifth Circuit. Even in an appeal that has become moot, there are costs that must be taxed against someone, and the Fifth Circuit was correct in taxing them against Hendrix. Rule 39(a) of the Federal Rules of Appellate Procedure clearly contemplates that costs shall generally be taxed against the appellant in the event of dismissal of an appeal.

## B.

### Not Having Complained Of A Prejudgment Seizure In The Court Below, Hendrix Is Precluded From Making Such A Complaint On Appeal.

Hendrix neither pleaded nor proved in the district court below that the merchandise in question was originally seized by a writ of sequestration issued prior to Schroder's judgment and that Hendrix had no opportunity for hearing prior to the seizure. Undoubtedly, the reason for this failure to make an issue of prejudgment seizure is that at the time of the commencement of the action below the merchandise



was being held pursuant to orders issued only *after* Schroder secured its judgment against Hendrix. Since the object of Hendrix in instituting the action below was to gain control of the merchandise and since at the time of the action the control of Hendrix was precluded by postjudgment and not prejudgment orders, complaint of prejudgment seizure would not have allowed Hendrix to receive the relief it desired.

Since this issue was not presented to the trial court and was not decided by the Fifth Circuit, there is no reason that this Court should grant a writ of certiorari to consider it.

#### C.

##### **Hendrix Released Any Cause Of Action It May Have Had Against Schroder By Virtue Of The Prejudgment Sequestration.**

In the compromise agreement executed by Hendrix and Schroder subsequent to the initial sequestration, Hendrix released Schroder from any and all claims, demands or causes of action connected with the sequestration. This agreement was negotiated between an attorney for Schroder and an attorney for Hendrix. It has been held that a right to a hearing may be waived even prior to the origination of a controversy when the waiver is negotiated between corporate parties represented by competent counsel. *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 171 (1972). Therefore, the release and waiver by Hendrix, which occurred only after the origination of the controversy and which was negotiated between counsel for corporate parties, is clearly valid.

#### D.

##### **Customs Laws Do Not Provide Debtors A Sanctuary From Payment Of Their Debts By Preventing The Recognition Of An Order Of A State Court Transferring Title To Bonded Merchandise And The Right To Withdraw It From Bond When The Order Fully Insures That There Will Be No Evasion Of Duties And Charges.**

Hendrix relies upon *Harris v. Dennie*, 8 U.S. 422 (1830), for the proposition that goods in Customs' bond are immune from seizure by state court officials by virtue of the laws regulating the storage of goods in Customs' bond, 19 U.S.C., Sections 1483, 1484(j), 1555 and 1557. Assuming that *Harris* can be construed to support such a proposition, it was modified in *Conrad v. Pacific Ins. Co.*, 10 U.S. 110 (1832), in which it was held that

"(*Harris v. Dennie*) decided no more than that no creditor could by any attachment or process, take the goods upon their importation out of the possession of the United States, until the lien of the United States for the duties accruing thereon was actually discharged, either by payment of duties, or by giving security therefor . . ." 10 U.S. at 111-112.

In the case before this Court, the purchasers of the goods at the judicial sales were required by the orders of sale to execute the standard transferee bond required by Customs that secures the payment of all

duties. Therefore, security having been given for the payment of the duties, the actions of the state officials do not contravene *Harris* as interpreted by *Conrad*.

The only federal case squarely in point, *General Exporting Co. v. Star Transfer Line*, 136 F2d 329 (6th Cir. 1943) was followed by the district court below. In its Petition Hendrix cites a Texas case, *Galveston H. & S.A. Ry. Co. v. Terrazas*, 171 S.W. 303 (Tex.Civ.App. — El Paso 1914, no writ), and argues that federal courts are bound to follow the Texas case rather than the decision of the Sixth Circuit. The question whether Customs' laws and regulations prevent state court action of the type at issue in the case before this Court is undoubtedly a federal one, and federal courts are compelled to follow the decisions of state courts only in situations in which the decision is governed by state law. *Erie R. Co. v. Tomkins*, 304 U.S. 64 (1938).

The purpose of the Customs laws and regulations at issue is to protect the interests of the United States, and those interests were fully protected in connection with the seizures in question. A ruling that the seizures were invalid would only further the interest of Hendrix and other debtors seeking to avoid payment of valid and final judgments.

#### E.

**The General Agreement On Tariffs And Trade Cannot Be Construed To Prevent A State Court From Transferring Title To Bonded Merchandise And The Right To Withdraw That Merchandise From Bond Because Such A Con-**

**struction Would Not Further The Objectives Of The Agreement And Would Only Provide Debtors A Sanctuary From The Payment Of Their Debts.**

Hendrix raises the novel theory that the state court action complained of below contravenes the General Agreements on Tariffs and Trade, an international agreement entered into by the United States and a number of other countries. The treaty provides that commerce moving into or out of a country shall not be subject to unnecessary delays or restrictions. The district court below found that the delay in the transit of goods in bond caused by a lien foreclosure suit is not an unnecessary delay within the meaning of the treaty. This ruling is correct. The obvious purpose of the treaty is to prohibit severe restrictions such as licensing and permit procedures — not judicial sales, which could have only the most minimal and remote effect upon the total mass of commerce crossing the United States for another country. The purpose is not, as the argument of Hendrix necessarily suggests, to provide the debtors a sanctuary for the payment of their debts.

#### CONCLUSION

The Court of Civil Appeals for the Fifth Circuit dismissed the appeal as moot, as it was clearly required to do under the firmly established precedents of this Court. If it granted certiorari, this Court would not be faced with any important and unsettled question of federal law. Nor is review of this case necessary to correct departure from the accepted and usual course

of judicial proceedings, as there was no such departure below. Therefore, the writ should be denied.

Respectfully submitted,

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Castaneda, Ken Kellar, d/b/a  
Exports, Inc., and Jud Brady,  
d/b/a Brady's.

# **CERTIFICATE OF SERVICE**

I, Gary Gurwitz, a member of the Bar of the Supreme Court of the United States and counsel of record for J. Henry Schroder Banking Corporation, Claudio Castaneda, Ken Kellar, d/b/a Exports, Inc., and Jud Brady, d/b/a Brady's herein, hereby certify that on April \_\_\_, 1978, pursuant to Rule 33, Rules of the Supreme Court, I served three copies of the foregoing Brief In Opposition To Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit on each of the parties herein, as follows:

Mr. Glenn L. Morgan  
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by depositing such copies in the United States Post Office, New Orleans, Louisiana, with first class postage prepaid, by Certified Mail, Return Receipt Requested, properly addressed to the post office address as shown above.

All parties required to be served have been served.

Dated the \_\_\_\_ day of April, 1978.

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d/b/a Brady's.

## APPENDIX

J. HENRY SCHRODER BANKING CORPORATION

versus

George P. SCHULTZ, Secretary of the Treasury of the  
United States, et al.

BEN R. HENDRIX TRADING CO., INC.

versus

J. HENRY SCHRODER BANKING CORPORATION  
et al.

Civ. A. Nos. 73-B-127, 73-B-128.

United States District Court,  
S. D. Texas,  
Brownsville Division.

Feb. 22, 1974.

Supplemental Memorandum  
April 25, 1974.

Consolidated action for declaratory judgment involving bonded goods located in warehouses in Texas counties. The United States District Court for the Southern District of Texas, Brownsville Division, Garza, J., held that goods in bond are under joint custody of collector of customs and warehouseman;

that the Texas District Court had jurisdiction to entertain an in personam lien foreclosure; that a state court may validly order a sale of property in bonded customs warehouses pursuant to in personam foreclosure suit on secured note covering the warehoused goods; that the amended order of sale was unenforceable as against warehouseman and customs where warehouseman was not a party to suit; that a delay in transit of goods in bond caused by lien foreclosure on note secured by warehouse goods is not a necessary delay and is not governed by provision of general agreement on trade and tariffs; and that the federal court is not a forum for appellate review of state district court judgments.

Judgment in accordance with opinion.

#### MEMORANDUM AND ORDER

GARZA, District Judge.

This action originally started out as two separate suits, Civil Actions 73-B-127 and 73-B-128, filed pursuant to the Declaratory Judgment Act, 28 U.S.C.A. § 2201, which were consolidated by Order of this Court on November 6, 1973. Jurisdiction is predicated on diversity, 28 U.S.C.A. § 1332 and 28 U.S.C.A. § 1331, in that this action arises under the laws of the United States. For purposes of simplification, the parties will be referred to as they were, or would have been, aligned in the first suit, Civil Action 73-B-127.

The subject of this lawsuit is bonded goods, some of which were in transit, most of which is liquor, and all

of which are presently located in bonded warehouses in the Texas counties of Webb and Hidalgo. Plaintiff-Cross Defendant J. Henry Schroder Banking Corporation, hereinafter referred to as "Bank", is a business organized under the laws of New York and is here seeking a declaratory judgment that certain attempted Sheriff's sales were not in violation of federal law; the Bank is also seeking a Writ of Mandamus to compel Customs officers to release the above mentioned bonded goods pursuant to a state court order, and an injunction to prevent Ben R. Hendrix Trading Co., Inc. from removing any of the goods in bond from the warehouses.

Defendant-Cross-Plaintiff Ben R. Hendrix Trading Co., Inc., hereinafter referred to as "Hendrix", is a Louisiana corporation, and is here seeking a declaratory judgment that the attempted Sheriff's sales and the underlying state court order are void.

Defendant George P. Schultz, Secretary of the Treasury of the United States; Shelby L. White, Acting Regional Commissioner of the United States Bureau of Customs; Anthony J. P. Farris, United States Attorney for the Southern District of Texas; and Elliot Richardson, Attorney General of the United States, all hereinafter referred to as "Customs", seek a finding by this Court that Customs officers are not bound by processes and orders of a state court which seek to control goods in Customs bond.

Defendant Victor M. Guerra, a resident of Hidalgo County, d/b/a Guerra Customs Bonded Warehouse; Defendant Alamo Express, Inc., a Texas Corporation; and SAIA Motor Freight Line, Inc., a Louisiana corporation, all hereinafter referred to as "Intervenors", are here seeking to protect their freight and warehouseman's liens.

Defendant Claudio Castaneda is the Sheriff of Hidalgo County.

Defendant Jud Brady, d/b/a Brady's, is a resident of Hidalgo County, Texas, and transacts an export business in the state of Texas.

Defendant Ken Kellar, d/b/a Exports, Inc., a Washington corporation, is a resident of the state of Washington and transacts an exporting business in the state of Texas.

Since the year 1968, the Bank has loaned substantial sums of money to Hendrix to finance its inventory. These loans were backed by a secured lien in favor of the Bank on Hendrix' assets, which, because of the nature of its exporting business, were continually changing. When Hendrix became unable to pay the amounts due on its notes, the Bank filed suit against Hendrix on April 25, 1973, in the 93rd District Court of Hidalgo County, Case # B26651, seeking foreclosure of the lien and a money judgment in the amount of \$295,465.97, plus costs. On the motion of the Bank, the state court sequestered all of Hendrix' assets located in either Hendrix' own warehouse or the Guerra's Custom Bonded Warehouse in Hidalgo County. As

will be discussed later, other goods that were in transit at the time of this sequestration would also become involved.

The Bank and Hendrix continued to work out their problems and soon reached a now controversial "compromise agreement" on May 22, 1973, wherein Hendrix admitted its debt to the Bank and agreed to the entry of a judgment against itself in the state lawsuit in the sum of \$295,465.97, plus costs, interest and attorneys' fees. The judgment was to be paid out of the proceeds of the sale of the above sequestered goods to Brady and Kellar, the buyers that the Bank had located. The sequestration was to expire on entry of the judgment, and Hendrix agreed that it would issue the necessary documents to effectuate the sale. In the meantime, however, Hendrix could also sell the goods on its own if, prior to June 2, 1973, Hendrix could find a buyer willing to pay more than the \$230,000.00 that the Bank's buyers had offered. The compromise agreement further stated that the judgment would also foreclose the Bank's lien on all of Hendrix' property not sequestered by the court's order, but this part of the judgment would not take effect until ninety days after the signing of the compromise agreement, giving the Bank an option should Hendrix fail to carry out as agreed the sale of the sequestered goods. The Bank additionally had the right to foreclose immediately on these other non-sequestered assets, if Hendrix tried to fraudulently remove or conceal any of its property from the reach of the Bank. Finally, the Bank agreed to fully release Hendrix from any and all indebtedness upon the payment to the Bank of \$300,000.00, on or before June 1, 1973. The agreement was signed by G. H.



Laube, a vice president, for the Bank, and by Mrs. Claire B. Wayne for Hendrix. The actual judgment of the state court was signed on behalf of Hendrix by Horace Hall, an attorney; the judgment was not signed by anyone on behalf of the Bank, though the name of Charles Murray, also an attorney, and the law firm of Atlas, Hall, Schwarz, Mills, Gurwitz & Bland appear in print. The judgment was duly entered on May 31, 1973.

By June of 1973, the Bank had located additional property of Hendrix in the form of bonded liquor in transit, carried by Alamo Express, Inc. in nine sealed trailers. The Bank in June, filed an application for Writ of Garnishment against Alamo Express in the 92nd District Court of Hidalgo County, Case No. A-11669. Alamo answered by way of interpleader of the Bank and the United States Bureau of Customs to determine which of the parties had rights to the merchandise contained in the trailers. This action is still pending in the state court. All parties later agreed to warehouse these goods in transit, so as to release the Alamo trailers back into line service, and this Court so ordered on August 31, 1973.

The spirit of compromise soon evaporated and relations between Hendrix and the Bank rapidly deteriorated. According to the Bank, Hendrix did not carry through with the sale of the sequestered goods and started to dispose of its property, contrary to the compromise; fearing the loss of other secured property, the Bank, pursuant to the option contemplated in the compromise agreement, obtained Orders of Sale on June 18, 1973, directing the Sheriffs of Hidalgo and

Webb Counties to hold public sales of the goods previously sequestered. Before these orders could be carried out, Mr. Palmer Kelly, Assistant United States Attorney for the Southern District of Texas, informed the Bank that Customs objected to this type of sale and suggested a reformed Order of Sale. Amended Orders of Sale that fully protected the interests of the Bureau of Customs and directed that the sales be carried out in conformity with all applicable federal laws were issued on July 6, 1973. However, on that same date, Mr. Shelby White, Acting Regional Commissioner of the United States Bureau of Customs, by letter, informed the attorneys for the Bank that, based on his understanding of relevant case law and statutes, goods in Customs bonded warehouses were not subject to any state orders, regardless of the form in which they were issued, and that Customs would simply not recognize any such orders. Pursuant to these Amended Orders of Sale, two Sheriff's sales were attempted in July of 1973, but in both instances, Customs refused to release the property despite the presence of purchasers with cash in hand who were ready to pay all customs duties and internal revenue taxes owing on said property.

On July 6, 1973, Hendrix joined the assault on the state court orders by filing its Bill of Review in the 93rd District Court of Hidalgo County, claiming that the underlying consent judgment had been obtained by a fraud on the court and was, therefore, null and void.

Despite the abundance of jurisdictional grounds, neither Hendrix nor the Bank sought removal to federal court, but this noninvolvement terminated on

August 13, 1973, with the filing of two suits for a Declaratory Judgment in this Court. In the first suit, Civil Action 73-B-127, the Bank sued George P. Shultz, Secretary of the Treasury of the United States; Shelby L. White, Acting Regional Commissioner of the United States Bureau of Customs; Anthony J. P. Farris, United States Attorney for the Southern District of Texas; Elliot Richardson, Attorney General of the United States; Ben R. Hendrix Trading Co., Inc.; and Victor M. Guerra, Individually and d/b/a Guerra's Custom Bonded Warehouse.

The second federal suit, Civil Action 73-B-128, was brought by Hendrix against J. Henry Schroder Banking Corporation; Claudio Castaneda, Sheriff of Hidalgo County, Texas; Cleburne Maier, Regional Commissioner of Customs; Alamo Express, Inc.; Ken Kellar, d/b/a Exports, Inc.; and Jud Brady, d/b/a Brady's.

On January 3, 1974, a trial before the Court was held.

Notwithstanding this rather complex statement of facts, there is but one question of law around which all other issues revolve: May a state court validly order a sale of property in bonded customs warehouses pursuant to an *in personam* foreclosure suit on a secured note covering the warehoused goods?

Goods in bond are under the joint custody of the Collector of Customs and the warehouseman. It is this joint custody that gives rise to the fiction that the goods are not really in the host state, but are merely passing through it. Hendrix has cited to the Court a

long line of cases to support this fiction and apparently reads them to mean that bonded goods are beyond state processes for all purposes. In addition, both Hendrix and Customs have cited various statutes, notably, 19 C.F.R. 19.6c, note 11, providing that:

Imported goods in bonded warehouses are exempt from taxation or judicial processes of any State or subdivision thereof . . . .

and 28 U.S.C. § 2463:

All property taken or detained under any revenue law of the United States shall not be replevable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof . . . .

and 19 U.S.C. § 1484(j):

Merchandise [in a bonded warehouse] shall be released from customs custody only to and upon the order of the carrier by whom merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse . . . .

When read in conjunction with the cases cited by Hendrix, these statutes seem to form a diamond-hard exterior which a state court cannot penetrate. This was certainly the approach that earlier courts had taken.



In *Harris v. Dennie*, 3 Pet. 292, 28 U.S. 292, 7 L.Ed. 683 (1830), the Court stated that:

The United States having a lien on the goods for the payment of the duties accruing thereon, and being entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right of custody; and being repugnant to the laws of the United States, is void . . . .

But time has withered this rather singular approach. Federal Courts have acknowledged the States' right to regulate bonded merchandise for the safety of its citizens or to prevent bonded liquors from entering the stream of state commerce without prior payment of the appropriate taxes. See *Epstein v. Lordi*, 261 F.Supp. 921 (D.C.N.J.1966); *Hostetter v. Idlewild Bon-Voyage Liquor Corp.*, 377 U.S. 324, 84 S.Ct. 1293, 12 L.Ed.2d 350 (1964). At the same time, however, the States have not been allowed to impose their own scheme of liquor taxation or regulation on bonded liquor in transit when that liquor is not destined for use or consumption in the warehousing state. *United States v. Gudger*, 249 U.S. 373, 39 S.Ct. 323, 63 L.Ed. 653 (1919); *Collins v. Yosemite Park Co.*, 304 U.S. 518, 58 S.Ct. 1009, 82 L.Ed. 1502 (1938); *Johnson v. Yellow Cab*, 321 U.S. 383, 64 S.Ct. 622, 88 L.Ed. 814 (1944); *Hostetter v. Idlewild Bon-Voyage Liquor Co.*, *supra*; *Ammex Warehouse Co. v. Dept. of Alcoholic Beverage Control*, 224 F.Supp. 546 (S.D.Cal.1963), *aff'd* 378 U.S. 124, 84 S.Ct. 1657, 12 L.Ed.2d 743. *Hendrix* has relied on this line of cases to support its "passing through" theory,

but such reliance is misdirected. These cases did not involve bonded goods as such, but attempts by states to regulate the liquor industry, conflicts regarding state control based on the 21st Amendment and the free flow of interstate commerce. The case before this Court has nothing to do with state regulation of the liquor trade, but with adjudication of title of goods in bond which happen to be distilled spirits. The above cited cases are simply not dispositive of the questions of law raised by the pleadings.

Both *Hendrix* and *Customs* have also cited the case of *McGoldrick v. Gulf Oil Corp.*, 309 U.S. 414, 60 S.Ct. 664, 84 L.Ed. 840 (1939). This was a non-liquor case, wherein the City of New York sought to tax sales of fuel from a bonded warehouse to ships engaged in foreign commerce. There the Supreme Court held that the state tax was invalid in light of Congressional regulation of foreign commerce. But like the liquor cases, *McGoldrick* involved interference by a state in its legislative capacity, not in its judicial capacity. Language in *McGoldrick* to the effect that such goods are not part of the common taxable mass of a state is, on its face, limited to legislative interferences with bonded goods and is inapplicable to suits between private parties where the state is acting only as an adjudicator of rights.

The 93rd District Court of Hidalgo County clearly had jurisdiction to entertain an *in personam* lien foreclosure, wherein the named lienholder and the debtor were before the court. The ordered sale, however, is, under Texas law, an *in rem* proceeding, wherein the issuing court must have actual or constructive

custody of the res. The problem that developed when the Sheriff sought as an agent of the court to enforce the judgment arose in a very similar suit in Michigan, *General Exporting Co. v. Star Transfer Line et al.*, 136 F.2d 329 (CA 6 1943), cert. den'd 323 U.S. 724, 65 S.Ct. 56, 89 L.Ed. 581 (1944). In that litigation, Southard and Company, Ltd., of London, sold to General Exporting Company 799 cases of imported Scotch whiskey in bond. On arrival in this country, the purchaser, General Exporting, warehoused the bonded liquor with Star Transfer Line and sold the negotiable warehouse receipts to one John McKeown. Difficulties arose when General Exporting refused to pay the purchase price to Southard and Company, Ltd. The warehouser, Star, became worried about his lien on the goods and sued Southard, General Exporting, and John McKeown in state court. The state court, after impounding the receipts, decreed that Southard was the rightful owner and ordered the warehouseman, Star, to sell the liquor in a manner that would insure that all federal tax would be protected.

Thereafter, General Exporting filed suit in federal district court against Star, Customs, and the judge that presided over the state suit, praying that the Collector of Customs be enjoined from disposing of the whiskey, that the issuing judge be enjoined from taking any further proceedings and that his decree be declared null and void. Star answered that a state court of coordinate jurisdiction had already decided the issues, and that these same issues should not now be re-litigated in federal court. Customs answered that their only interest was in the collection of duties potentially owing to the United States, but that they

would not be bound by orders of a state court which tried to dispose of bonded goods. The federal district court dismissed the suit for want of jurisdiction. On appeal, the Sixth Circuit held that such dismissal was proper. In so holding, it recognized that Customs custody of bonded goods is not exclusive and that state courts can act to settle title disputes involving bonded goods. It further sanctioned the remedy used by the state court: the impounding of the negotiable receipts and the mandated sale of the spirits by the warehouseman.

This Court finds that the *Star* case is similar to the one before the Court in several critical aspects: both cases involved goods in bond which were the subject of a final judgment of a state court; in both cases, the state court issued process and ordered a sale of the goods, and in both cases, Customs, along with a claiming owner who had been dispossessed of title by a state court, argued that state courts cannot exercise any jurisdiction over goods in bond, as jurisdiction is limited to the federal courts. The Sixth Circuit was not persuaded by the arguments concerning federal preemption and the commerce clause of the constitution, and held that state courts may effect any remedy that is not in conflict with the federal interests in the area. It brushed aside the exclusive custody arguments and referred to the cases cited to it to support such arguments, one of which was *Harris v. Denie*, *supra*, as "ancient authority that furnishes no true guidance toward the disentanglement of the involved issues in the case at bar".

This Court is convinced that the solution reached in the *Star* case is the proper one for the parties before



this Court. State courts are just as competent as this court to foreclose secured liens between private parties. Given that they have the power to adjudicate, they also have the right to enforce their judgments by the means of court ordered sales. Such sales must protect the tax liens of the United States and in all other aspects conform to the applicable federal regulations. The original state court order in the case before this Court apparently did not protect those interests and another order had to be drawn up.

The Amended Order of Sale was more than adequate in its protection of the tax interests of the United States, but it contained one fatal flaw: it was not directed to the warehouseman, nor could it have been since the warehouseman was not a named party in the original suit, nor was he interpled, nor did he intervene. He was not before the court and was, therefore, not subject to its decree. This failure to join the warehouseman is critical in light of the Department of Treasury regulations governing the release of goods in bond, particularly 19 U.S.C. § 1484(j), which specifically provides that goods "shall be released from customs custody only to or upon the order of the proprietor of the warehouse". This regulation is part of a comprehensive scheme governing the management of goods in bond and must be complied with by any court seeking to control such goods. In the *Star* case, the warehouseman was a party to the suit before the state court, and the court's decree was, in part, addressed to him. But such is not the case in this suit. The state judgment in our state suit is, therefore, unenforceable as against the warehouseman and Customs, and they need not comply with it as written.

Hendrix seeks to distinguish the *Star* case on factual and procedural grounds. As to the facts, Hendrix claims that the goods in the *Star* case were intended to be imported into the United States, whereas the goods in the case before this Court were bound for export, and, in fact, could not ever be legally imported into the United States because of their failure to comply with federal Food and Drug requirements. While there is indeed a factual difference between goods merely resting on American soil and goods that are not only resting on our soil but are also going to enter the domestic stream of commerce, the courts have not found this difference to be legally significant and generally recognize the power of the states to control both types of goods consistent with federal statutes. *Epstein v. Lordi, supra*; *Hostetter v. Idlewild Bon-Voyage Liquor Co., supra*.

Hendrix also asserts a procedural distinction, in that there was an actual impoundment of negotiable warehouse receipts in the *Star* case, while in the case before this Court, there was no such impoundment. This is surely a distinction without a difference. The state court does not have to choose, from among the various processes at its command, the same form of process that was used in *Star* to bring itself within the purview of the *Star* holding. What is involved here is the basic question of whether or not a court may issue any type of process over bonded goods; this Court is not concerned with the exact type of process employed.

Hendrix has cited the provisions of the 1947 General Agreement on Trade and Tariffs, a treaty commonly

referred to as GATT, to further support its "passing through" theory. Article V does have some bearing:

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this Article 'traffic in transit'.

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in case of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be

subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of service rendered.

Hendrix claims that though this is a presidential agreement, it has been given force and effect by the courts and that such force and effect are necessary for a free flow of goods in foreign commerce. Hendrix also argues that if state interference with foreign commerce were allowed, then the constitutional grant to the executive of the conduct of foreign policy would be frustrated. Two observations here seem relevant. First, GATT was not in force during the *Star* case cited above; second, and more important, the Article quoted proscribes "unnecessary delays or restrictions". This Court finds that a delay in the transit of the goods in bond caused by a lien foreclosure suit on a note secured by those goods is a necessary delay. To hold otherwise would allow GATT-V to become a haven for debtors who then become beyond the reach of any law, state or federal.

There remains the question of what can now be done. The Court must assume that the two principal parties, Hendrix and the Bank, have knowingly and voluntarily chosen to litigate their financial differences in the state courts. The 93rd District Court of Hidalgo County has assumed jurisdiction of a matter of which this Court has concurrent jurisdiction, but comity requires that the suit be allowed to run its course in the



state court system. Questions of fraud and failure to comply with the statutory scheme for Sheriff's sales are questions that must be litigated in the state courts. This Court is not a forum for appellate review of state district court judgments, nor can it correct litigants' failure to bring in necessary parties to that suit, such as the warehouseman.

I, therefore, find that on the authority of *General Exporting Co. v. Star Transfer et al.*, 136 F.2d 329 (CA 6 1943), cert. den'd 323 U.S. 724, 65 S.Ct. 56, 89 L.Ed. 581 (1944), the 93rd District Court of Hidalgo County did have jurisdiction to hear the foreclosure suit that was before it and to enter any orders necessary to protect its jurisdiction or to effectuate its judgments, so long as the orders are directed to the proper parties and comply with the federal statutes regulating the release of bonded goods from bonded warehouses. I further find that the two Amended Orders of Sale did not comply with those federal statutes, particularly 19 U.S.C. § 1484(j), in that the warehouseman was not a party to the original state suit and was not, therefore, subject to the orders of the state court. The Amended Orders of Sale are, therefore, unenforceable as against Customs or the warehousemen. As Hendrix and the Bank originally chose to litigate the lien foreclosure in state court and as the state court accepted jurisdiction of that suit, the parties must return to the state forum to settle their differences.

In light of the validity of the state court processes issued over the bonded goods, this Court finds that it is unnecessary to grant the Bank's request for an injunction; for the same reason, this Court finds that it would

be inappropriate to grant the Bank's Writ of Mandamus to compel the release of the bonded goods.

In summary, this suit started out and continues to be a lien suit between two private corporations. It involves the state not in its executive or legislative roles, but only in its judicial capacity. This alone distinguishes it from most of the authority cited to support the "passing through" theory. The state court foreclosed a lien and ordered a sale of the secured goods; Customs officials refused to draw up the necessary instruments to effectuate that sale, claiming that they were not bound by state court orders. While it is clear that the state could entertain the *in personam* action to foreclose the lien, its judgment must protect federal tax interests, as well as comply with Customs statutes regulating the release of goods in bond.

Whether a good is in a state or merely passing through depends on the interest being protected. There is ample case authority which holds that *liquor* in bond is not in a state for state taxing purposes; at the same time, and not in conflict with the above, there is also ample authority that *goods* in bond are present in a state for purposes of *in personam* lien foreclosures between two private parties. Final destination of goods and compliance with Food and Drug laws for packaging and the like doesn't really change the status of a bonded good. Bonded chattels on their way to Mexico have the same legal character as bonded chattels on their way to Arkansas and are controlled by the same body of federal regulations. Finally, imperfection in the state judgment, such as the alleged fraud, are matters for the state appellate system.



There remains for disposition the intervening claims of the carriers and the warehousemen. Their claims are amply protected under the existing Customs regulations, and nothing in this Memorandum or the Judgment being entered herein will in any way prejudice their liens, and the Bureau of Customs is hereby directed to see that the liens of the Interveners here, Victor M. Guerra, d/b/a Guerra Customs Bonded Warehouse, Alamo Express, Inc. and SAIA Motor Freight Line, Inc., are fully protected under the law.

A Judgment in accordance with this Memorandum is this day being entered.

#### JUDGMENT

In accordance with the Memorandum of this date in the above entitled and numbered cause, this Court declares that the 93rd District Court of Hidalgo County, Texas, did have jurisdiction to entertain the case of Schroder v. Hendrix, Cause # B 26651, and to issue all processes necessary to protect its jurisdiction or effectuate its judgments so long as those processes complied with Customs regulations. This Court further declares that the two Amended Orders of Sale of July 6, 1973, did not comply with Customs regulations and are unenforceable. Plaintiff Schroder Banking Company's requests for an injunction and a Writ of Mandamus are hereby denied.

The causes above cited are hereby dismissed and dropped from the docket of this Court, without prejudice to the rights of the parties to these lawsuits to

enforce their rights either in the state courts or under the Customs laws and regulations.

#### SUPPLEMENTAL MEMORANDUM

This Court entered its Memorandum on the 22nd day of February, 1974, and entered Judgment in accordance with said Memorandum on the same date, in the above entitled and numbered causes. Within the time allotted by the rules, three of the parties have filed motions regarding said Memorandum, which are now before the Court.

The Federal Defendants, who, in fact, can be lumped into the Bureau of Customs, are complaining that this Court did nothing by its Memorandum with regard to its Order of August 31, 1973. They also seek an Order from this Court that the Bureau of Customs and individual Customs officials be exonerated from liability from following either the Orders of this Court or of the State Court.

Alamo Express, Inc. has filed its Motion to Modify or Amend Judgment, also complaining of the fact that this Court did not dispose of its Order of August 31, 1973, and asking that the legal custody and possession of the merchandise warehoused pursuant to that Order be released to them, so that it will be in a position to file a Bill of Interpleader in State Court to secure an adjudication of the rights of all the parties to the goods warehoused.

J. Henry Schroder Banking Corporation has filed a Motion for a New Trial or To Amend Findings and Judgment. One of their main contentions is that the Webb County Order of Sale sold merchandise located only at the warehouse at 1714 Faragot Street, Laredo, Texas, and that this warehouse is owned and operated by Ben R. Hendrix Trading Company, Inc., the original Defendant in the 93rd District Court of Hidalgo County, Texas. While this may be true, the Order of Sale out of the 93rd District Court did not order the warehousemen to sell the property, but instead ordered the Sheriff of said county to sell the property, and their request that I amend my findings and judgment to validate that Order of Sale is denied. Their Motion for a New Trial is also denied. What this Court held by its Memorandum of February 22nd, to which reference is hereby made for all purposes, was that the 93rd Judicial District Court of Hidalgo County, Texas, had jurisdiction to adjudicate the title to the goods in question. The Judgment of that Court foreclosed a lien on the goods belonging to Ben R. Hendrix Trading Company, Inc., which included not only goods that were already warehoused, but those goods which were in the trucks of Alamo Express, Inc. and which were warehoused upon the agreed Order entered by this Court on August 31, 1973. That Order should now be dissolved, and the legal custody of said goods is now returned to Alamo Express, Inc., and for the purpose of complying with Customs regulations, to the warehousemen where they are now located.

Having found and declared that the 93rd Judicial District Court of Hidalgo County, Texas, had jurisdiction over the goods in question, the Bureau of

Customs and its officials must comply with the lawful Orders of that Court with regard to the disposition of the goods in question. The Bureau of Customs and its individual officials are exonerated from any liability for complying with the lawful Orders of that State Court or of this Court.

This Court has indicated that in accordance with Bureau of Customs regulations, if the 93rd Judicial District Court of Hidalgo County, Texas, wants to dispose of said goods, it must direct its Order to the warehousemen, and in the case of the goods which were being transported by Alamo Express, Inc., to the warehousemen and Alamo Express, Inc. In other words, this Court now holds that all of said goods belonging to Ben R. Hendrix Trading Company, Inc. are in *custodia legis* of 93rd Judicial District Court of Hidalgo County, Texas, and they cannot be disposed of, unless upon Orders of that Court lawfully entered, to comply with Customs regulations.

At the time of entering its Memorandum of February 22nd, a further application to intervene was filed in this Court by Francisca Recio de Vela, Individually and as Independent executrix of the Estate of E. G. Vela, Deceased, in which it was claimed certain warehouseman's charges and expenses in connection with the storage of certain wines and alcoholic spirits which were in part the subject of the above suits. Their right to intervene is hereby granted. They, however, stand in the same shoes as the other intervening carriers and warehousemen, and the Bureau of Customs is hereby directed to see that the liens of the Interveners, Victor M. Guerra, d/b/a Guerra Customs



Bonded Warehouse, Alamo Express, Inc., SAIA Motor Freight Line, Inc. and Francisca Recio de Vela, Individually and as Independent Executrix of the Estate of E. G. Vela, Deceased, are fully protected under the law.

The question of whether the Judgment giving rise to the foreclosure Orders of the 93rd Judicial District Court of Hidalgo County, Texas, is valid or not apparently is still in litigation, but that is a matter for the State Courts, as previously held in my Memorandum of February 22nd. An Amended Judgment, in compliance with my Memorandum of February 22nd and this Supplemental Memorandum, is this day being entered.

The Clerk will send copies of this Supplemental Memorandum, together with the Amended Judgment, to counsel for the parties.

#### AMENDED JUDGMENT

In accordance with the Memorandum of February 22, 1974, and the Supplemental Memorandum of this date in the above entitled and numbered causes, this Court declares that the 93rd Judicial District Court of Hidalgo County, Texas, did have jurisdiction to entertain the case of Schroder v. Hendrix, Cause #B 26651, and to issue all processes necessary to protect its jurisdiction or effectuate its judgments, so long as those processes complied with Customs regulations.

This Court further declares that the two Amended Orders of Sale of July 6, 1973, did not comply with

Customs regulations and were and are unenforceable. Plaintiff J. Henry Schroder Banking Corporation's requests for an injunction and a Writ of Mandamus to the Bureau of Customs and its officials are hereby denied.

The Order of this Court of August 31, 1973, is hereby dissolved and the legal possession of the goods which were the subject of that warehousing order is declared to be in Alamo Express, Inc. and, for the purpose of complying with Customs regulations, in the warehousemen with whom the goods were placed. Having found that the goods in question are in *custodia legis* of the 93rd Judicial District Court of Hidalgo County, Texas, the Bureau of Customs and its officials are hereby ordered not to release said goods, except upon orders duly issued by the said 93rd Judicial District Court, which orders shall comply with Customs regulations, in accordance with this Court's Memorandum, and the United States Bureau of Customs and its officials are hereby exonerated from any and all liability for refusing to honor the Orders of Sale heretofore held void in this Court's Memorandum of February 22nd, or for obeying further orders of the 93rd Judicial District Court or from obeying the order of this Court.

Further disposition of the goods in question must be sought by the parties in the 93rd Judicial District Court of Hidalgo County, Texas, which this Court has found has *custodia legis* of said goods. This Judgment is binding on all parties as to those things declared by this Court, and is a Final Judgment herein.